National Rural Health Association

Date: July 10, 2023

To: Office of Information and Regulatory Affairs, Office of Management and Budget, Executive Office of the President; Centers for Medicare and Medicaid Services

From: National Rural Health Association

Subject: Minimum Staffing Standards for Long-Term Care Facilities (CMS-3442)

Background:

Nationally, the long-term care (LTC) sector was hit harder by the COVID-19 pandemic than other health care sectors.[1] According to American Health Care Association data, the LTC workforce is unlikely to rebound to pre-pandemic levels for several years considering that over 200,000 more long-term care workers are needed to reach pre-COVID-19 staffing numbers.[2]

The issue in rural LTC facilities is more acute. Between 2008 and 2018, 472 rural nursing homes closed making 10.1% of rural counties nursing home deserts.[3] The landscape is worse in certain predominantly rural states such as Montana where 16% of the state's nursing homes closed in 2022. In the same year in Iowa, 13 of 15 nursing homes closures occurred in rural areas.[4] Similarly, two-thirds of nursing homes that closed in Texas between 2018 and 2022 were serving rural communities. A lack of post-acute care beds has had ripple effects in rural health care, particularly for hospitals that cannot discharge patients who no longer require inpatient acute care but cannot safely return home. Further regulations that could debilitate nursing homes would only intensify placement challenges and put patient safety at risk.

A myriad of factors plays into the challenge of keeping rural nursing homes open and viable, most of which stem from workforce shortages. First, caseloads at rural facilities are often more difficult because rural Americans, on average, are older, sicker, and poorer. Challenging caseloads more frequently lead to staff burnout and retainment issues. At the facility level, fewer staff can result in difficulty taking time off and overtime pay, meaning higher staffing costs for facilities.

Second, rural nursing homes pay less than their urban counterparts. Further, nursing homes generally pay less than hospitals or office settings, making employment elsewhere more attractive for many nursing professionals, particularly registered nurses (RNs). An RN at a nursing home has an average salary of about $72,000. For rural nursing homes, this figure is even lower.[5] Nurses at hospitals have an average salary of about $10,000 more than those in nursing homes.[6] The majority

[1] https://www.ahcancal.org/News-and-Communications/Fact-Sheets/FactSheets/LTC-Jobs-Report-Jan2023.pdf
[2] https://www.ahcancal.org/News-and-Communications/Fact-Sheets/FactSheets/LTC-Jobs-Report-Jan2023.pdf
[3] https://rupri.public-health.uiowa.edu/publications/policybriefs/2021/Rural%20NH%20Closure.pdf
[4] https://kffhealthnews.org/news/article/wave-of-rural-nursing-home-closures-grows-amid-staffing-crunch/
[5] https://www.sc.edu/study/colleges_schools/public_health/research/research_centers/sc_rural_health_research_center/documents/ruralregisterednurses.pdf#page=11
[6] https://www.bls.gov/oes/current/oes291141.htm

of nursing homes have increased pay and offered bonuses to attract staff[7] but rural facilities are disadvantaged as they operate on thinner margins and thus have less ability to increase wages or offer additional benefits to attract staff.[8]

Discussion:

NRHA understands and agrees with the goal of providing safe and quality care for patients; however, we do not think that across-the-board staffing mandates for rural facilities further this goal. The LTC sector is continuing to slowly recover from the COVID-19 pandemic, and thus it is an inopportune time to place further burdens, including a potential unfunded staffing mandate, on these providers. Applying a one-size-fits-all standard to nursing homes does not account for each facility's individual characteristics and capabilities, particularly for rural facilities. The workforce concerns above highlight the need for flexibility around proposed minimum staffing standards in rural nursing homes. Rural facilities are not equipped to comply with unfunded staffing mandates that do not account for their unique capacity, resource, and staffing characteristics.

NRHA points to the April 6, 2023, Executive Order titled, "Modernizing Regulatory Review."[9] This Executive Order states that regulatory analysis of administrative actions should recognize the distributive impacts of the action as well as equity considerations.[10] Geography is an equity consideration, especially when coupled with the disparities frequently co-occurring in underserved rural communities.

The distributive impact of minimum staffing standards on rural nursing homes will be felt disproportionately by rural beneficiaries if such mandates ultimately lead to facility closure. Rural communities already face a lack of post-acute care beds which has a ripple effect on rural hospitals. When rural hospitals cannot discharge or transfer patients to an appropriate setting, they face the difficult choice of turning away new patients due to placement issues. Between 2019 and 2022 all patients saw a 20.2% increase in their average length of stay at a hospital while waiting for a skilled nursing facility bed.[11] CMS must not impose one-size-fits-all requirements that will hamstring already struggling rural nursing homes, hospitals, and beneficiaries and their families.

Further, rural areas have fewer home- and community-based alternatives for residents; thus, nursing homes are vital access points in these communities for rural older adults. Imposing strict federal staffing standards could close rural facilities because they cannot afford the staff needed to meet the requirements or face potential sanctions. The distributive impact of this proposed policy would impact access and could ultimately lead to worse health outcomes for older adults that cannot be placed in the care setting that best meets their needs.

Recommended action:

As CMS moves forward with a proposed rule on minimum staffing standards for nursing, NRHA cautions the agency against a one-size-fits-all approach. We stress that rural facilities cannot adhere

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[7] https://www.ahcancal.org/News-and-Communications/Fact-Sheets/FactSheets/State-of-Nursing-Homes-Infographic.pdf

[8] For more, please see our response to CMS' request for information in the FY 2023 Skilled Nursing Facility Prospective Payment System (SNF PPS) proposed rule.

[9] Exec. Order No. 14,094, 88 Fed. Reg. 21, 879 (Apr. 6, 2023).

[10] *Id.*

[11] https://www.aha.org/issue-brief/2022-12-05-patients-and-providers-faced-increasing-delays-timely-discharges

to the same requirements as urban facilities due to resource limitations and workforce shortages. We urge CMS and the Administration to put forth rural-specific standards, exempt rural facilities from the proposed rule, or create a temporary waiver for facilities who are actively recruiting but not able to meet the requirement.[12]

For example, CMS could implement graduated levels of licensed nurses on duty based upon the number of beds at the facility and the time of day to accommodate rural, low-volume facilities. CMS could also allow small, rural facilities to group RNs and licensed practical nurses together to meet requirements while more well-resourced nursing homes must use an RN. NRHA also encourages exemptions for rural facilities from any potential onerous requirements such as a 24/7 RN on-duty standard. For further detail please see our policy suggestions included in our response to CMS' request for information in the FY 2023 Skilled Nursing Facility Prospective Payment System NRPM.

For additional information please contact Alexa McKinley, NRHA's Regulatory Affairs Manager, at amckinley@ruralhealth.us.

[12] CMS currently grants one-year waivers to rural health clinics that are unable to hire a physician assistant, nurse practitioner, or certified nurse midwife to comply with the 50% mid-level practitioner on-site requirement. CMS may offer a similar exception process for nursing homes that cannot hire staff.